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SENATE

{ REPORT
106-220

NRC FAIRNESS IN FUNDING ACT OF 1999

NOVEMBER 9, 1999.—Ordered to be printed

Mr. SMITH of New Hampshire, from the Committee on
Environment and Public Works, submitted the following

REPORT

[to accompany S. 1627]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 1627) to extend the authority of the Nuclear Regulatory Commission to collect fees through 2004, and for other purposes, having considered the same, reports favorably thereon with an amendment, and an amendment to the title, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

This legislation provides for a 5-year extension of the Nuclear Regulatory Commission's (NRC) authority to collect fees in an amount sufficient to constitute 100 percent of the NRC's fiscal year budget authority (less the amount appropriated for the Nuclear Waste Fund), with the addition of an exclusion for costs of those activities for which it would not be fair and equitable to assess charges. This bill also amends current law to enhance nuclear safety and physical security, increase NRC efficiency, and maximize Commission resources.

BACKGROUND

History of NRC Fee Authority

In 1986, Congress enacted the Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA-85 (P.L. 99-272). Section 7601 of this legislation directed the NRC to assess and collect annual fees from its licensees in an amount that, when added to other fees such as fees for service collected in the same fiscal year would not exceed 33 percent of NRC costs for that fiscal year. COBRA-85 directed that this annual charge should be “reasonably related to the regulatory service provided by the Commission and [must] fairly reflect the cost to the Commission of providing such service.”

In the late 1980’s, Congress twice acted to increase the percentage of the NRC budget that was to be collected in fees. Congress enacted the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), which directed the NRC to collect up to 45 percent of its budget in fees in each of fiscal years 1988 and 1989. The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-234) extended this requirement through fiscal year 1990.

One year later, Congress approved the Omnibus Budget Reconciliation Act of 1990, known as OBRA-90 (P.L. 101-508). Section 6101 of that legislation required the NRC to collect fees-for-service from NRC applicants and annual fees from NRC licensees. With regard to fees-for-service, OBRA-90 required that pursuant to the Independent Offices Appropriations Act, the NRC continue to charge any applicant or other person receiving a service from the NRC a fee covering the cost to the NRC of providing the service. With regard to annual charges, the legislation directed the NRC to collect annual fees from licensees that “[t]o the maximum extent practicable . . . have a reasonable relationship to the cost of providing regulatory services” and in an amount that, when added to the amount collected in fees for service and the amount appropriated for the Nuclear Waste Fund, would approximate fully 100 percent of NRC budget authority for that fiscal year. To meet the new requirement, the NRC adopted a policy of collecting annual fees not only from reactor licensees, but materials licensees as well.

OBRA-90 provided this “100 percent” fee authority for a period of 5 years, through fiscal year 1995. Since then, that authority has been extended three times: for an additional 3 years (through fiscal year 1998) by the Omnibus Budget Reconciliation Act of 1993, or OBRA-93 (P.L. 103-66); for an additional year (through fiscal year 1999) by the 1998 Energy and Water Development appropriations legislation (P.L. 105-245); and for an additional year (through fiscal year 2000) by the 1999 Energy and Water Development appropriations legislation (P.L. 106-60).

Fairness Concerns

In the early 1990’s, concerns were raised regarding the fairness of the fee assessment structure. In the Energy Policy Act of 1992 (P.L. 102-486), Congress took steps to address one perceived inequity by statutorily excluding certain federally owned research reactors from the NRC annual fee requirement. In addition, the 1992 Act directed the NRC to undertake a review of its policy for assessing annual charges, solicit public comment on necessary changes to

such policy, and make recommendations to Congress on possible changes to existing law that could prevent an unfair burden from being levied on certain NRC licensees.

Accordingly, in February 1994 the NRC submitted to Congress its "Report to Congress on the U.S. Nuclear Regulatory Commission's Licensee Fee Policy Review Required by the Energy Policy Act of 1992." The Report took into account not only the 566 public comments received during the compilation of the Report, but also the more than 1,000 public comments submitted during consideration of previous fee-related rules, the thousands of letters and phone calls received regarding fees, two petitions for rule-making, a court decision, and an NRC-requested review by the Commission's Inspector General.

The 1994 Report identified two key concerns regarding fairness and equity: first, that not all direct beneficiaries of NRC activities pay fees; and second, that fees are based on the NRC's cost of performance, rather than on the licensees' perception of benefits received. With regard to the question of fees that are not directly related to services to licensees, the Report acknowledged that the fee requirements inherently placed a burden on licensees when certain activities such as some international activities, oversight of and regulatory support to the Agreement State program, the statutory fee exemption for Federal agencies, and the NRC's fee exemptions or reductions for nonprofit educational institutions and small entities are considered. As for the issue of benefits perceived, the Report concluded that the concern had merit when considered with regard to the materials regulatory program.

Finally, the Report included legislative recommendations to Congress to remove certain costs from the fee base, the net effect of which would be the recovery of 90 percent of the NRC's budget authority through fees. While the NRC initiated some changes in its fee structure, Congress did not act on the legislative recommendations.

COMMITTEE ACTIONS

Concerns about fair and equitable assessment of fees continue to be relevant today. The activities of the NRC that raise fairness and equity issues are important to the NRC's statutory health and safety mission. However, the cost of such activities should not be recovered through fee collection, but rather through direct appropriation. Therefore, the committee twice has acted on legislation that would address fairness concerns.

On May 18, 1998, Environment and Public Works Committee Chairman Chafee introduced the NRC Fairness in Funding Act of 1998 (S. 2090), legislation to extend the authority of the NRC to collect fees through 2003, and to exclude from the fee base those costs for which it would not be fair and equitable to assess charges on licensees. Joining him as original cosponsors were Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety Chairman Inhofe and Ranking Member Graham; Subcommittee on Superfund, Waste Control, and Risk Assessment Chairman Smith; and Senator Jeffords. S. 2090 was reported favorably by the full committee on May 21; however, the bill did not receive Senate approval prior to the end of the 105th Congress.

On September 23, 1999, Senator Inhofe introduced the NRC Fairness in Funding Act of 1999 (S. 1627), legislation to extend the authority of the NRC to collect fees through 2004, and to exclude inequitable costs from the fee base. On September 29, Senator Inhofe offered an amendment in the nature of a substitute on behalf of Senators Chafee, Baucus, and Graham. Title I of that amendment extends the NRC's fee authority through 2005, excludes inequitable costs from the fee base, and allows fee recovery from other government agencies for NRC services. Title II of the amendment amends current law to enhance nuclear safety and physical security, increase NRC efficiency, and maximize Commission resources. The full committee unanimously adopted the substitute amendment, and then favorably reported S. 1627 as amended. A section-by-section analysis of S. 1627 as amended follows.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; Table of Contents

This section provides the short title of the bill ("NRC Fairness in Funding Act of 1999") and a table of contents.

Section 101. Nuclear Regulatory Commission Annual Charges

This section amends current law to extend the NRC's 100 percent fee collection authority for 5 years, from September 30, 2000, to September 30, 2005.

Section 101 also amends current law to require that the NRC exclude from the total amount collected in annual charges from licensees the costs of those activities for which the NRC determines that it would not be fair and equitable to assess on NRC licensees. This requirement would be phased in over the 5-year authorization period. Specifically, for fiscal year 2001 and 2002, Section 101 directs the NRC to exclude from the fee base an amount equal to the amount appropriated to the Commission for non-fee activities, with a cap on the total amount excluded of 12 percent of the Commission's budget authority. For fiscal year 2003, 2004, and 2005, the section directs the NRC to exclude from the fee base an amount equal to the cost of non-fee activities, with a gradually increasing cap on the total amount excluded of 4 percent, 8 percent, and 12 percent, respectively.

Section 102. Cost Recovery from Government Agencies

This section allows the NRC to recover fees from other government agencies for NRC services (such as licensing and inspection services). It permits the NRC, beginning in fiscal year 2001, to assess fees on and collect fees from other Federal agencies for NRC services, rather than recovering the costs associated with those services through the annual licensee charges.

Section 201. Office Location

This section eliminates the requirement that the NRC maintain an office in the District of Columbia for service of process and papers. Because the NRC has been consolidated in Rockville, Maryland, and may be served at that location, this requirement no longer is merited.

Section 202. License Period

Section 202 clarifies that the initial duration of a combined construction and operating license may be up to 40 years from the date on which the NRC finds that the acceptance criteria of the license are met. This clarification ensures that the duration period of combined licenses is consistent with that of separate operating licenses.

Section 203. Elimination of NRC Antitrust Reviews

This section eliminates prospectively the NRC's antitrust review requirement in connection with applications to construct or operate a commercial utilization or production facility. Given the broad antitrust authority of both the Federal Energy Regulatory Commission (FERC) and the Department of Justice, the NRC's authority is rarely used and duplicative, and does not need to be maintained. This provision is intended to affect only the NRC's antitrust responsibilities with respect to its regulatory actions. The NRC remains responsible for assuring that its licensees continue to operate plants safely, regardless of changes that may take place in the structure of the industry. Interested members of the public therefore will continue to have the opportunity to intervene in NRC proceedings to raise potential safety issues related to those changes.

Section 204. Gift Acceptance Authority

Section 204 provides the NRC with general gift acceptance authority for personal and real property (excluding money) that may aid or facilitate the work of the Commission. It directs the NRC to establish written criteria for determining whether to accept such gifts, and requires that those criteria take into account whether acceptance of the gift would compromise the integrity (or the appearance thereof) of the Commission. The NRC is expected to provide the committee an annual report of all gifts accepted pursuant to this authority.

Section 205. Carrying of Firearms by Licensee Employees

Section 205 permits the NRC to authorize guards at certain sensitive NRC-licensed or -certified facilities, and guards transporting special nuclear materials, to carry and use firearms to prevent sabotage of such facilities or theft of nuclear explosive material. The section also authorizes the NRC to issue regulations shielding guards against State prosecution for discharge of firearms in the performance of official duties. These changes would enhance national security by providing sensitive NRC facilities and transport with authority equivalent to the authority currently possessed by the Department of Energy for the protection of its nuclear facilities and transport.

Section 206. Unauthorized Introduction of Dangerous Weapons

This section expands existing NRC authority to issue regulations prohibiting the unauthorized introduction of any weapon, explosive, or dangerous instrument into facilities under NRC jurisdiction or custody to those facilities regulated or certified by the NRC. This change ensures that NRC-licensed and -certified facilities may be

protected from injury or damage from introduction of unauthorized weapons.

Section 207. Sabotage of Nuclear Facilities or Fuel

This section expands existing Federal criminal sanctions for sabotage or attempted sabotage of production or utilization facilities to include sabotage or attempted sabotage during the construction stage of those facilities, if the damage could affect public health and safety during facility operation. Section 207 also expands the sanctions to include sabotage or attempted sabotage of operating fuel fabrication facilities.

HEARINGS

No hearings were held on S. 1627, although the issue of equity and fairness in fees has been the subject of discussion and legislation in previous Congresses.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of legislation be noted in the report.

On September 29, 1999, the committee met to consider S. 1627. The committee adopted an amendment in the nature of a substitute, and then approved the legislation by unanimous consent. No rollcall votes occurred on the bill.

EVALUATION OF REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication in the report of the committee's estimate of the regulatory impact of the bill as reported. S. 1627, as reported, is expected to impose no new regulatory impact. This bill will not affect the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the committee makes the following evaluation of the Federal mandates contained in the reported bill. S. 1627, as reported, imposes no Federal intergovernmental mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of a reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 21, 1999.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,

U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1627, the NRC Fairness in Funding Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for Federal costs), who can be reached at 226-2860, Lisa Cash Driskill (for the State and local impact), who can be reached at 225-3290, and Jean Wooster (for the private-sector impact), who can be reached at 226-2940.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1627, NRC Fairness in Funding Act of 1999, as ordered reported by the Senate Committee on Environment and Public Works on September 29, 1999

Summary

S. 1627 would extend the authority of the Nuclear Regulatory Commission (NRC) to collect annual charges from its licensees to order all of the agency's general fund appropriation. The bill does not authorize the appropriation of any funds to support the NRC mission in 2001 or subsequent years, but assuming that appropriations continue at approximately the 2000 level, additional annual income from these fees would average \$225 million annually over the 2001-2004 period. These fees would be recorded as offsetting collections to the NRC's appropriation.

S. 1627 would authorize the NRC to accept gifts or property from the public to facilitate the NRC's work, and would establish a new criminal penalty for the sabotage of nuclear production, utilization, or waste storage facilities. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that such change would be less than \$500,000 a year.

By extending the NRC's authority to collect fees from utilities, S. 1627 would impose both an intergovernmental and private-sector mandate as defined by the Unfunded Mandates Reform Act (UMRA). That mandate would not impose costs above the threshold established in UMRA for intergovernmental mandates (\$50 million in 1996, adjusted for inflation). CBO cannot, however, determine whether the direct costs of the mandate would exceed the annual threshold for private-sector mandates (\$100 million in 1996, adjusted for inflation) because UMRA does not clearly specify how to determine the direct costs associated with extending an existing mandate that has not yet expired. Depending on how they are measured, the direct costs to the private sector could exceed the threshold.

Estimated Costs to the Federal Government

The estimated budgetary impact of S. 1627 is shown in the following table. The costs of this legislation fall within budget function 270 (energy).

By Fiscal Year, in Millions of Dollars

	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
Offsetting Collections Under Current Law:					
Estimated Authorization Level ^a	-447	-155	-155	-155	-155
Estimated Outlays	-447	-155	-155	-155	-155
Proposed Changes:					
Estimated Authorization Level ^b	0	-242	-242	-278	-260
Estimated Outlays	0	-242	-242	-278	-260
Offsetting Collections Under S. 1627:					
Estimated Authorization Level ^a	-447	-397	-397	-433	-415
Estimated Overlays	-447	-397	-397	-433	-415

^a The 2000 level of collections reflect the amount appropriated for the NRC by Public Law 106-60. The 2001-2004 collections assume continued funding for the agency at the 2000 level.

^b The estimated amount of offsetting collections under S. 1627 assumes that funding over the 2001-2004 period for the agency will be equal to its 2000 appropriation.

Spending Subject to Appropriation

Under current law, the NRC is directed to collect fees and annual charges sufficient to offset its entire general fund appropriation. This authority expires at the end of 2000; however, the agency has permanent authority to collect fees and annual charges sufficient to offset 33 percent of its annual appropriation (from the general fund or any special funds). S. 1627 would extend the agency's authority to fully offset its general fund appropriation with fees and annual charges through 2005, except that the bill would allow the NRC to exclude certain portions of its budget from annual charges that the agency determines would not be fair and equitable to assess on its licensees or at class of its licensees. Under the bill, the portion that could be excluded from annual charges could not exceed 12 percent of the NRC's general fund appropriation in 2001 and 2002, 4 percent of its appropriation in 2003, and 8 percent of its appropriation in 2004.

In 2000, the Congress appropriated \$470 million for the NRC and the NRC Office of the Inspector General. That total includes \$19 million from the Nuclear Waste Trust Fund and \$451 million from the general fund of the Treasury. CBO estimates that the agency will collect only \$447 million in 2000 through fees and annual charges, however, because a provision in its 2000 appropriation directs the agency to exclude \$4 million from fee collections. The estimated amount of offsetting collections under S. 1627 assumes that funding over the 2001-2004 period for the agency will be equal to its 2000 appropriation.

Direct Spending and Revenues

The bill would establish a new criminal penalty for the sabotage of nuclear production, utilization, or waste storage facilities. CBO estimates that enacting this provision would increase governmental receipts by less than \$500,000 a year. Criminal fines are deposited in the Crime Victims Fund and are spent in subsequent years. Thus, any resulting change in direct spending from the fund would also amount to less than \$500,000 annually.

Pay-As-You-Go Considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting S. 1627 would result in changes in direct spending and governmental receipts of less than \$500,000 a year.

Intergovernmental and Private-Sector Impact

Under current law, the NRC collects annual fees from its licensees sufficient to offset its general fund appropriation. The NRC's existing authority to impose such fees expires at the end of fiscal year 2000. S. 1627 would extend the NRC's current authority to charge annual fees to offset its general fund appropriation through fiscal year 2005, except that the bill would allow the NRC to exclude certain portions of its budget from annual charges. The requirement to pay those fees would be both an intergovernmental and private-sector mandate as defined in UMRA.

Under current law, when the NRC's authority to collect fees to offset its general fund appropriation expires at the end of 2000, CBO estimates that the utilities would pay fees equal to about one-third of NRC's appropriation, or \$155 million in 2001. S. 1621 would extend the NRC's authority to collect fees to offset a major portion of its budget. Assuming the 2000 appropriation level is maintained through 2005, CBO estimates that ending Me fees under the bill would result in additional collections from utilities licensed and regulated by the NRC that range from \$242 million to \$278 million annually beginning in fiscal year 2001. Most of the annual fees would be paid by private, investor-owned nuclear utilities (less than 5 percent would be paid by non-Federal, publicly owned utilities).

CBO cannot determine whether this mandate would impose any costs as defined in UMRA because the law is unclear about how to measure costs associated with extending an existing mandate that has not yet expired. Measured against the costs that would be incurred if current law remains in place and the annual fee declines, the total cost to the private sector of extending this mandate would range from \$242 million to \$278 million annually from fiscal year 2001 through 2005. In that case, the cost of the mandate would exceed the annual threshold for the private sector as defined in UMRA. By contrast, UMRA may be interpreted to mean that the costs could be measured against the current level of fees. In that case, the mandate would impose no additional COSTS on the private sector because the fees under S. 1627 would be lower than those currently in effect (because some of NRC's costs would be excluded from coverage by the fees). In either case, CBO estimates that the totals costs to State, local, and tribal governments would be below the threshold for intergovernmental mandates established in UMRA.

Estimate prepared by: Federal Costs: Mark Hadley (226–2860) Impact on State, Local, and Tribal Governments: Lisa Cash Driskill (225–3270) Impact on the Private Sector: Jean Wooster (226–2940)

Estimate approved by: Peter H. Fontaine Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

ATOMIC ENERGY ACT OF 1954¹

[As Amended Through P.L. 105–394, November 13, 1998]

An Act for the development and control of atomic energy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

TITLE I—ATOMIC ENERGY

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

Sec. 1. * * *

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Sec. 170C. Criteria for acceptance of gifts.

Sec. 170D. Carrying of firearms.

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SEC. 23. OFFICE.—The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; [however, the Commission shall maintain an office for the service of process and papers within the District of Columbia].

[42 U.S.C. 2033]

* * * * *

SEC. 103. COMMERCIAL LICENSES.—

a. The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

b. The Commission shall issue such licenses on a non-exclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are

¹This Act consists of the Act of August 1, 1946, ch. 724, as amended by the Act of Aug. 30, 1954, ch. 1073 (68 stat. 921) and by subsequent amendments. The Act appears generally in the United States code at 42 U.S.C. 2011 et seq. Bracketed notes are used at the end of each section for the convenience of the reader to indicate the United States Code citation.

equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

【c. Each such】

c. LICENSE PERIOD.—

(1) IN GENERAL.—*Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding 40 years, and may be renewed upon the expiration of such period.*

(2) COMBINED LICENSES.—*In the case of a combined construction and operating license issued under section 185(b), the initial duration of the license may not exceed 40 years from the date on which the Commission finds, before operation of the facility, that the acceptance criteria required by section 185(b) are met.*

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SEC. 105. ANTITRUST PROVISIONS.—

a. * * *

* * * * *

(d) APPLICABILITY.—*Subsection (c) shall not apply to an application for a license to construct or operate a utilization facility under section 103 or 104(b) that is pending on or that is filed on or after the date of enactment of this subsection.*

* * * * *

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * *

g. (1) acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in 【this Act】 *this Act*; or

(2) *accept, hold, utilize, and administer gifts of real and personal property (not including money) for the purpose of aiding or facilitating the work of the Nuclear Regulatory Commission.*

* * * * *

【k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of

those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;■

(k) authorize to carry a firearm in the performance of official duties such of its members, officers, and employees, such of the employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities, and such of the employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission or in the protection of property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities, as the Commission considers necessary in the interest of the common defense and security;

* * * * *

w. prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., [or which operates any facility regulated or certified under section 1701 or 1702], any fee, charge, or price which it may require, in accordance with the provisions of section [483a] 9701 of title 31 of the United States Code²

²Prior section 483a of title 31, United States Code, has been codified as section 9701 of such title.

or any other law, of applicants for, or holders of, such licenses or certificates, and, commencing October 1, 2000, prescribe and collect from any other Government agency any fee, charge, or price that the Commission may require in accordance with section 9701 of title 31, United States Code, or any other law.

* * * * *

SEC. 170C. CRITERIA FOR ACCEPTANCE OF GIFTS.

(a) *IN GENERAL.*—The Commission shall establish written criteria for determining whether to accept gifts under section 161g.(2).

(b) *CONSIDERATIONS.*—The criteria under subsection (a) shall take into consideration whether the acceptance of the gift would compromise the integrity of, or the appearance of the integrity of, the Commission or any officer or employee of the Commission.

* * * * *

SEC. 170D. CARRYING OF FIREARMS.

(a) *AUTHORITY TO MAKE ARREST.*—

(1) *IN GENERAL.*—A person authorized under section 161k. to carry a firearm may, while in the performance of, and in connection with, official duties, arrest an individual without a warrant for any offense against the United States committed in the presence of the person or for any felony under the laws of the United States if the person has a reasonable ground to believe that the individual has committed or is committing such a felony.

(2) *LIMITATION.*—An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to make an arrest under paragraph (1) may make an arrest only—

(A) when the individual is within, or is in flight directly from, the area in which the offense was committed; and

(B) in the enforcement of—

(i) a law regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or a licensee or certificate holder of the Commission;

(ii) a law applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission under section 161k.;

(iii) a law applicable to property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

(iv) any provision of this Act that subjects an offender to a fine, imprisonment, or both.

(3) *OTHER AUTHORITY.*—The arrest authority conferred by this section is in addition to any arrest authority under other law.

(4) *GUIDELINES.—The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement section 161k. and this subsection.*

* * * * *
SEC. 229,³ TRESPASS UPON COMMISSION INSTALLATIONS.—

a.⁴ The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission. Every such regulation of the Commission shall be posted conspicuously at the location involved *or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act.*

* * * * *
SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste [storage facility] *storage, treatment, or disposal facility* licensed under this Act;

(3) any nuclear fuel for [such a utilization facility] *a utilization facility licensed under this Act*, or any spent nuclear fuel from such a facility; [or]

(4) any uranium enrichment [facility licensed] *or nuclear fuel fabrication facility licensed or certified* by the Nuclear Regulatory Commission shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; *or*

(5) *any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the person knows or reasonably should know that there is a significant possibility that the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility.*

* * * * *

OMNIBUS BUDGET RECONCILIATION ACT OF 1990

[Public Law: 101–508]

A bill to provide for reconciliation to section 4 of the concurrent resolution on the budget for fiscal year 1991.

* * * * *

³ So in original. Comma probably should be a period.

⁴ Indentation of subsections so in original.

SUBTITLE B—NRC USER FEES AND ANNUAL CHARGES

SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) ANNUAL ASSESSMENT—

(1) IN GENERAL.—Except as provided in paragraph (3), the Nuclear Regulatory Commission (in this section referred to as the ‘Commission’) shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

[(2) FIRST ASSESSMENT.—The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.]

(2) AGGREGATE AMOUNT OF CHARGES.—*The aggregate amount of the annual charges collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission for the fiscal year for which the charge is collected, less, with respect to the fiscal year, the sum of—*

(A) any amount appropriated to the Commission from the Nuclear Waste Fund;

(B) the amount of fees collected under subsection (b); and

(C)(i) for fiscal years 2001 and 2002, an amount equal to the amount of appropriations made to the Commission from the general fund of the Treasury in response to the request for appropriations referred to in paragraph (5)(A)(ii); and

(ii) for fiscal years 2003 through 2005, to the extent provided in paragraph (5), the costs of activities of the Commission with respect to which a determination is made under paragraph (5).

(3) LAST ASSESSMENT OF ANNUAL CHARGES.—The last assessment of annual charges under subsection (c) shall be made not later than [September 30, 1999] *September 30, 2005.*

* * * * *

(5) EXCLUDED BUDGET COSTS.—

(A) IN GENERAL.—*In the budget request for fiscal year 2001 and each fiscal year thereafter, the Commission shall—*

(i) determine the activities of the Commission that could not be fairly and equitably funded through assessments of annual charges on a licensee or class of licensee of the Commission; and

(ii) subject to subparagraph (C), request that funding for the activities described in clause (i) be appropriated to the Commission out of the general fund of the Treasury.

(B) CONSIDERATIONS.—*In making the determination under subparagraph (A), the Commission shall consider—*

(i) the extent to which activities of the Commission provide benefits to persons that are not licensees of the Commission; and

(ii) the extent to which the Commission cannot, as a matter of law, or does not, as a matter of policy, as-

sess fees or charges on a licensee or class of licensee that benefits from the activities.

(C) MAXIMUM EXCLUDED AMOUNT.—The total amount of costs for which appropriations from the general fund of the Treasury may be sought by the Commission under subparagraph (A)(ii) for any fiscal year shall not exceed—

(i) for fiscal years 2001 and 2002, 12 percent of the budget authority of the Commission;

(ii) for fiscal year 2003, 4 percent of the budget authority of the Commission;

(iii) for fiscal year 2004, 8 percent of the budget authority of the Commission; or

(iv) for fiscal year 2005, 12 percent of the budget authority of the Commission.

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